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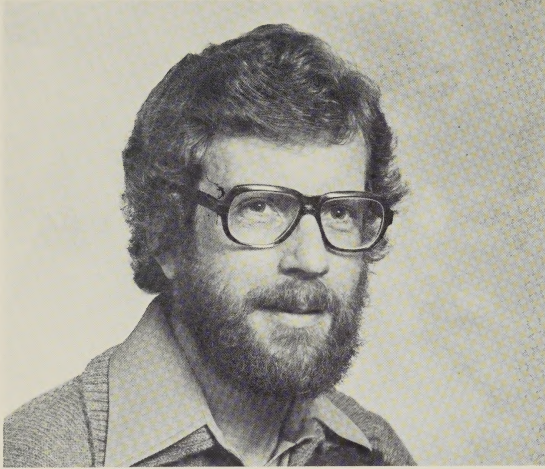
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Indian and Eskimo Affairs Program  
Economic Development—Operations

# Legal Aspects of Economic Development on Indian Reserve Lands

# About The Author



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# Introduction

Indian reserve lands tend to be underdeveloped when compared to adjacent non-Indian land. Some reserves are favourable sites for business enterprises. While there have been both Indian and non-Indian businesses on reserve lands for many years, we are now in a period of increasing use of reserve lands for such purposes.

While there has been an increased involvement of lawyers in Indian questions over the last few years, no legal material has been publicly available canvassing the questions involved in economic development on reserve lands. The problems are not formidable, but a lawyer advising a businessman or a band must adjust his or her thinking to different real property rules and the special role of the *Indian Act* and the Department of Indian Affairs. This booklet will attempt to give a general picture of the legal framework which exists for on-reserve businesses. Readers are cautioned that it describes the legislation, regulations, the policies of the Department of Indian Affairs and the judicial decisions as of January 1st, 1976. All are subject to change with varying degrees of public notice and varying levels of clarity.

The conclusions drawn in the report are those of the author and do not necessarily reflect the views of the Department of Indian Affairs. Because the *Indian Act* gives considerable power to the Department of Indian Affairs, this report will naturally focus more on Department policies than on the views of Indian bands or Indian organizations.

# Federal Laws and Indian Reserves

The basic federal legislation dealing with Indian reserves is the *Indian Act*<sup>1</sup>. There are regulations under the *Indian Act* dealing with a number of matters, including mining, timber and waste disposal. Additionally there are regulations under appropriations acts dealing with the Indian economic development loan fund, Indian fisherman's loans and off-reserve Indian housing. Quarterly listings of regulations and band council by-laws are published in the Consolidated Index of Statutory Instruments, Canada Gazette, Part II. The Index should be complete, at least, for regulations and by-laws enacted since the statutory instruments registry came into being as a result of the *Statutory Instruments Act* 1971<sup>2</sup>.

In addition to the *Indian Act* there are other relevant federal statutes. In 1974 a separate *Indian Oil and Gas Act*<sup>3</sup> was enacted by Parliament. The *Farm Credit Act*<sup>4</sup> and the *Farm Syndicates Credit Act*<sup>5</sup> both have provisions for loans for on-reserve farming operations. The *St. Lawrence Seaway Authority Act*<sup>6</sup> and the *National Energy Board Act*<sup>7</sup> both have sections on the expropriation of Indian reserve lands, but those provisions are not exceptions to the procedures on expropriation set out in the *Indian Act* (s.35). Additional references to reserve lands occur in the *Veteran's Land Act*<sup>8</sup>, the *Canada Land Surveys Act*<sup>9</sup> and the *Land Titles Act*<sup>10</sup>.

Since the *Indian Act*, the regulations and band council by-laws are all "laws of Canada", the *Canadian Bill of Rights*<sup>11</sup> applies to them.

In addition to these current statutes there are a number of statutes and federal-provincial agreements which, over the years, have handled a series of property questions relating to reserves. The basic documents in this series are listed in Appendix A. Their role is discussed more fully in Section 2, Federal Government Rights in the Reserve.

## 1. THE SCOPE OF FEDERAL JURISDICTION

The federal government has jurisdiction over the use of reserve land and jurisdiction over the transactions which are involved in the lease or sale of reserve lands. This federal jurisdiction continues down to the point where the land is sold and letters patent have been issued to the purchaser.<sup>12</sup>

Section 29 of the *Indian Act* provides that reserve lands are not subject to seizure under legal process.<sup>13</sup> Section 35 provides that expropriation of reserve land under federal or provincial laws is only possible with the consent of the Governor in Council, a consent that in practice is not normally

<sup>1</sup> R.S.C. 1970, Ch. 1-6. There have been special acts dealing with particular reserves or particular parcels of Reserve land, such as the act respecting the Songhees Indian Reserve, 1911, 1-2 GEO V, Ch. 24. The St. Regis Islands Act 1927, 17 GEO V, Ch. 37, is one such act and makes special provisions for the leasing of named islands in the St. Lawrence River, which are part of the St. Regis Indian Reserve.

<sup>2</sup> S.C. 1970-71, Ch. 38.

<sup>3</sup> S.C. 1974-75, Ch. 15.

<sup>4</sup> R.S.C. 1970, Ch. F-2, s. 19.

<sup>5</sup> R.S.C. 1970, Ch. F-4, s. 4.

<sup>6</sup> R.S.C. 1970, Ch. S-1, s. 19 (5).

<sup>7</sup> R.S.C. 1970, Ch. N-6, s. 67 (1) and (2).

<sup>8</sup> R.S.C. 1970, Ch. V-4, s. 46.

<sup>9</sup> R.S.C. 1970, Ch. L-5, s. 30 and s. 32 (2).

<sup>10</sup> R.S.C. 1970, Ch. L-4, s. 85.

<sup>11</sup> R.S.C. 1970, Appendix III.

<sup>12</sup> In *Sanderson v Heap*, (1909) 11 W.L.R. 238, 19 Manitoba L.R. 122, (Manitoba Court of Kings Bench) it was held that provincial laws would govern a sale after the issuance of letters patent even in the situation where the person obtaining letters patent was an Indian from the particular band which had surrendered the land.

In *Church v Fenton*, (1880) 5 S.C.R. 239 (but see the judgment of the Ontario Court of Common Pleas, (1878) 28 U.C.C.P. 384) a provincial tax sale of surrendered reserve lands was permitted, but after the issuance of letters patent. In *Totten v Traux*, (1888) 16 O.R. 490 (Ontario Chancery Division) a provincial tax sale of surrendered reserve lands was permitted before the issuance of letters patent but with the concurrence of the superintendent general of Indian Affairs. In *Ruddell v Georgeson*, (1893) 9 Manitoba L.R. 407, a case involving federal Crown lands, not Indian reserve lands, a provincial tax sale of unpatented Crown lands was held not to prevail against the subsequent issuance of letters patent by the federal government to the assignee of the original purchaser. The requirement of federal consent to a tax sale of unpatented surrendered reserve lands was codified in the *Indian Act*: R.S.C. 1906, Ch. 81, s. 58. This section is cited, without criticism, in *Richards v Collins*, (1912) 9 D.L.R. 249, 27 O.L.R. 395 (Ontario Divisional Court). In *Kamsack v Canadian Northern Town Properties*, (1924) S.C.R. 80, (1924) 4 D.L.R. 824, Mr. Justice Idington, at page 81, commented on the impossibility of securing sale of the non-Indian interest in the reserve lands. To get around a

parallel problem, involving federal Crown lands, Mr. Justice Duff in the leading decision of *Smith v Rural Municipality of Vermillion Hills*, (1914) 49 S.C.R. 563 (Supreme Court of Canada, affirmed on appeal to the Judicial Committee of the Privy Council, 30 D.L.R. 83), at 573-574 defined the tax on a non-Crown interest in Crown lands as a tax *in personam*, that is against the person of the occupier or holder of the interest, not a tax chargeable against the land. That rationale has been accepted in later cases involving provincial taxation and non-Indian interest in reserve lands: *School Commissioners for the District of Maniwaki v Brady*, (1928) 66 R.J.Q. 41; *City of Vancouver v Chow Chee*, (1941) 1 W.W.R. 72; *Provincial Municipal Assessor v Rural Municipality of Harrison*, (1971) 3 W.W.R. 735; *Sammartino v Attorney General of British Columbia*, (1972) 1 W.W.R. 24. The impact of this series of decisions relating to taxation is to preclude provincial interference with the transactions in Indian reserve land prior to the issuance of letters patent to a third party owner. They establish that the provinces cannot interfere with the transactions on the basis of taxing authority. There are no parallel cases dealing with possible provincial interference based on expropriation powers or based on provincial legislation dealing with the seizure of property in satisfaction of debts, but it is suggested that the same result should occur in those situations as well. Provincial interference with the transactions would run contrary to provisions in the *Indian Act*: s. 41, 53 (1) and s. 54. It is suggested that these sections are constitutionally valid whether or not surrendered reserve lands fall within the meaning of the term reserve in the *Indian Act*. It is enough that surrendered lands fall within federal jurisdiction as "Lands reserved for the Indians" as held in *Surrey v Peace Arch*, (1970) 74 W.W.R. 380 (B.C. Court of Appeal).

Another possible problem would exist in the situation where letters patent have been issued, but the Crown has taken a mortgage to secure payment of the purchase. While this situation is not commented on in any decided case, it seems likely that provincial laws would apply to the mortgage and the right of redemption. The Indian Lands Registry of the Department of Indian Affairs will not register a mortgage after letters patent in the Registry.

<sup>13</sup> Both s. 29 on seizure and s. 35 on expropriation refer to reserve lands and not to reserve or surrendered lands. The question whether the term reserve includes unsold surrendered reserve lands is discussed in part four, Band Local Government Powers. For reasons suggested in footnote 12, it is the writer's view that provincial powers of seizure and expropriation of land would not extend to surrendered lands, because of the analogy to the principles of the cases involving provincial taxation of third party interests in Crown or reserve lands. In this view, then, section 29 is simply a codification of the law and section 35 is a permissive section. An anomaly which appears to result is that the expropriations permitted by section 35 may be limited to unsold surrendered lands, depending upon how the courts in the future interpret the status of surrendered lands (whether within the term "reserve" or not).

given without band council concurrence.<sup>14</sup> Section 87 (a) provides that the interest of an Indian or a band in reserve or surrendered lands is exempt from provincial taxation.<sup>15</sup>

## 2. FEDERAL GOVERNMENT RIGHTS IN THE RESERVE

The Indian Act, section 2 (1) defines the term "reserve" as

... A tract of land, the legal title to which is vested in Her Majesty, that has been set apart by Her Majesty for the use and benefit of a band

This section must be read together with section 36, which defines "special reserves":

Where lands have been set apart for the use and benefit of a band and legal title thereto is not vested in Her Majesty, this Act applies as though the lands were a reserve within the meaning of this Act.

The Judicial Committee of the Privy Council ruled in 1888 that while the British North America Act gave legislative jurisdiction over "Indians, and Lands Reserved for the Indians" to the federal government, that did not give the federal government the ownership of such lands.<sup>16</sup> As a result of that decision and two subsequent Privy Council decisions<sup>17</sup> a surrender of Indian reserve lands resulted in provincial ownership of the surrendered lands. Surrender to the federal government for lease or sale was impossible for the federal government lost control of the land as soon as it was surrendered. These rulings frustrated part of federal Indian reserve policy and the federal government attempted to reverse the rulings by agreements with the various provincial governments. Agreements presently exist with all provincial governments with the exceptions of Quebec and Prince Edward Island. There are presently no Indian reserves in Newfoundland and Labrador. Since the federal government retained ownership over land and natural resources on the Prairies until 1930, the provisions for that region of Canada are in the Natural Resources Transfer Agreements. The basic documents dealing with these questions are listed in Appendix A. Lawyers involved with projects on reserve lands should be aware of the particular agreements (a) to ascertain whether the federal government has the power to accept surrenders and manage surrendered lands for a particular Indian reserve, and (b) to be aware whether there are any special conditions or reservations in the particular agreements. The conditions or reservations can deal with provincial expropriation powers, mineral rights, water rights, riparian rights, water boundaries, gravel and road allowances.

## 3. BAND RIGHTS IN A RESERVE

The *Indian Act* describes reserves as lands "set apart for the use and benefit of a band". Certain judicial decisions have held that the band has a real property right in the reserve, a personal and usufructuary right to the use and benefit of the land.<sup>18</sup> A second method of describing the band's position is to speak of the Crown holding the reserve in trust for the band. The band is the beneficiary, the *cestui que trust*.<sup>19</sup> In one judicial decision the Ontario Supreme Court ruled that a reserve was Crown land and the prerogative of the Crown to deal with its own property was unlimited. It was not even limited by the provisions of the *Indian Act*.<sup>20</sup> This ruling is out of step both with the practice of the Department of Indian Affairs and with other judicial comment on the question. The Exchequer Court once described band rights to reserve lands as, for all practical purposes, the equivalent to a fee simple.<sup>21</sup>

Most questions of band rights to reserve lands have been effectively subsumed into the administrative regime for reserve lands set out in the *Indian Act*. As a result general discussions of theories of ownership of reserves (as between the band and the Crown) have little practical application. For most purposes, the nature of band rights and the nature of federal government rights are found in the detailed provisions of the *Indian Act*, not in traditional property law concepts or alternative theoretical models of property relationships.<sup>22</sup>

## 4. INDIVIDUAL INDIAN RIGHTS IN A RESERVE

A band member may obtain the right to use a portion of a reserve. Legal security of possession of the right is only obtained if there is an allotment of the land by the band council with the approval of the Minister (s. 20 (1)).<sup>23</sup> The documentary proof of the right is either a Location Ticket (if issued before the coming into effect of the current *Indian Act* in 1951) or a Certificate of Possession (under the current legislation). The right can be expropriated for band or Indian Affairs purposes (s. 18 (2)). It terminates if the band surrenders the land (s. 38 (1)).<sup>24</sup> The rights described by the Certificate of Possession or Location Ticket can be cancelled, terminated or transferred with the consent of the Indian holding the rights (s. 24, s. 27). The rights can pass by devise (s. 49) and can be leased for the benefit of the holder (s. 58 (1) (b) and (3)).

<sup>14</sup> Statements about Department of Indian Affairs policies are taken from the Land Operations Handbook, the Indian Lands Registry Practices Manual (both prepared for internal use within the Department of Indian Affairs) and from discussions with various employees of the Department of Indian Affairs. The writer would like to acknowledge, particularly, the assistance of Mr. Gordon Poupore, Director of Lands and Membership and Mr. H.R. Phillips, Registrar of the Indian Lands Registry.

<sup>15</sup> See footnote 12 for the extent of provincial taxing power in relation to reserve or surrendered lands.

<sup>16</sup> *St. Catherine's Milling v The Queen*, (1889) 14 A.C. 46.

<sup>17</sup> *Attorney General for Quebec v Attorney General of Canada* (the Star Chrome case), (1921) 1 A.C. 401; *Ontario Mining v Seybold*, (1903) A.C. 73.

<sup>18</sup> *Attorney General for Quebec v Attorney General of Canada* (the Star Chrome case), (1921) 1 A.C. 401; *Brick Cartage v The Queen*, (1965) 1 Ex. C.R. 102; *R v Isaac*, Nova Scotia Supreme Court, Appeal Division, November 19, 1975, as yet unreported; *Isaac v Davey*, (1974) 5 O.R. 610 (on appeal the Supreme Court of Canada).

<sup>19</sup> There are a number of decisions which use trustee terminology. The most significant would be *Deaver v The King*, Exchequer Court of Canada, 1935, unreported; *Miller v The King*, (1950) 1 D.L.R. 513; *St. Ann's Island Shooting Club v The King*, (1950) S.C.R. 211.

<sup>20</sup> *Point v Dibblee Construction*, (1934) O.R. 142.

<sup>21</sup> *Brick Cartage v The Queen*, (1965) 1 Ex. C.R. 102.

<sup>22</sup> The concept used for Indian title, both to traditional territories and to reserves, was the concept of usufruct. This concept is foreign to English property law concepts, deriving originally from Roman Law. The usufruct is a part of the property law concepts in use in the Province of Quebec. In its origins the usufruct was actually a personal right (not a right *in rem*) and was not transferrable. The usefulness of relying on theory is evident when it is pointed out that the *Indian Act* has created a transferrable, devisable usufruct.

<sup>23</sup> There is no specific power to make a conditional allotment, though apparently some have been made. Section 22 provides for the establishment of lawful possession at the time of the creation of an Indian reserve and does not require band council consent.

<sup>24</sup> A surrender may specify that the individual rights revive if the land is unsundered. Otherwise, in theory at least, the rights do not revive. The land is restored as unallotted reserve land to which the band is free to make new allotments, unrelated to the previous allotments. In practice bands often treat the allottee's rights as reviving on an unsunder whether so specified in the surrender or not.

The only other situation where an Indian has formalized rights to use a portion of a reserve is where a Certificate of Occupation has been issued for a temporary period, not exceeding two years (s. 20 (4), (5) and (6)). The Department also issues what it calls a Notice of Entitlement, which is a stand-in for a Certificate of Possession until a proper survey is completed.

As with band rights to the reserve, there is no clear conceptual definition of the right of the individual holder of a Certificate of Possession. At one extreme, it could be suggested that the allotment is at the pleasure of the Minister or the Crown. Alternatively, it could be suggested that the Certificate of Possession grants a life estate (though the *Indian Act* permits transfer and devise of the interest). At the other extreme, the Exchequer Court once referred to the Indian interest in an allotment as, for all practical purposes, the equivalent of a fee simple interest<sup>25</sup>. Again, the only functional approach appears to be to describe the right in terms of the specific provisions of the *Indian Act*.

An Indian living on a reserve can invite people to enter the reserve to visit, to deliver goods, to purchase goods or to attend a meeting in the person's home. This kind of temporary entry onto the reserve is not a trespass because of the invitation. The Alberta appeal court has ruled that the band council cannot over-ride this individual permission and make such an entry a trespass.<sup>26</sup> In contrast, an Indian holding a Certificate of Possession to reserve lands cannot, on his or her own authority, permit continued occupation of that land by a non-band member. The band can validly over-ride that individual permission and authorize the Attorney-General of Canada to seek an order evicting such an occupant under s. 31 of the *Indian Act*. In so ruling, the Supreme Court of Canada affirmed the basic proposition that:

The scheme of the Indian Act is to maintain intact for bands of Indians, reserves set apart for them regardless of the wishes of any individual Indian to alienate for his own benefit any portion of the reserve of which he may be a locatee. That is provided for by s. 28 (1) of the Act.<sup>27</sup>

Nevertheless there are examples of illegal leases between individual band members and non-Indians. These are variously called "buckshee", "direct" or "ad hoc" leases. The general approach of the federal government is that it will only enforce the trespass and eviction sections of the *Indian Act* (s. 30, s. 31) at the request of the band council. The "buckshee" lessee will have no problems so long as the band council chooses to ignore the situation.

Many bands, particularly on the Prairies, choose not to use Certificates of Possession or any of the *Indian Act* provisions for internal Indian land holding on reserves. They follow what may be called "custom" or "traditional" land allotment patterns, in contrast with those found in the *Indian Act*. They allot land to individual band members, but do so at the discretion of the band council. They avoid any Ministerial validation of the allotment. The allottee, in law, has no more security of tenure than the band council, from time to time, is prepared to permit. In practice, on some reserves, the custom system is considered by the band council as being as sacrosanct as a fee simple system.

The Department of Indian Affairs used to issue a Licence of Occupation describing the right of occupancy granted by a band under a "custom" system. That practice has been discontinued. Some proof of a right of occupancy has been required by the Farm Credit Corporation and by Central Mortgage and Housing Corporation. The Department, currently, will issue a Notice of Rights of Use and Occupation, for such purposes, to describe a "custom" allotment. Alternatively a band council resolution confirming the member's right to possession of the land is often sufficient. In British Columbia the term "communal entitlement" to particular reserve lands has been used for both C.M.H.C. and provincial home owner grant purposes. The declaration that an Indian has a "communal entitlement" to particular reserve lands is made by the band council, not the Department of Indian Affairs.

It must be remembered that a company, even if wholly owned by band members, is not an Indian and not a band member. There is no company which would be able to hold an "allotment" of land on a reserve as that term is used in the *Indian Act*.

## 5. SURRENDER FOR LEASE

One method of permitting non-band member use of reserve land is for the band to surrender the land to the Crown and for the federal government to lease or sell the land to the non-band member. Prevailing Indian attitudes and current Department policy both oppose any sale of reserve land. In practice we are only speaking of surrenders for the purpose of leasing the land, granting easements or other limited rights.

As already noted, particular problems exist in relation to surrenders in parts of Quebec and Prince Edward Island. A surrender in parts of those two provinces would result in full provincial control over the land.<sup>28</sup> In the rest of Canada a surrender gives the proprietary power to manage the land to the federal government, subject to the terms of the *Indian Act* and the surrender.

The procedure for surrender is set out in sections 37 to 41 of the *Indian Act*. The following steps are involved:

(a) It must be ascertained whether there are band members with rights of possession to the lands to be surrendered and whether non-band members have obtained any rights of possession to those lands (for example under s. 28 (2) or s. 58 (1) (b) or (3)). The rights of the non-band member, if any, must be bought out or otherwise extinguished. The band member with rights of possession and the band will have to work out an agreement about (i) compensation for improvements, and (ii) sharing the revenues from the lease or sale.<sup>29</sup>

(b) The terms of the surrender must be specified. Section 38 (2) provides that a surrender may be "absolute or qualified, conditional or unconditional." The conditions are important for they govern the activity of the federal Crown in dealing with the land (s. 53 (1)). If the surrender specifies a term for the surrender, the land will revert to the band upon the completion of the term.

(c) A list of electors must be prepared so that the voting requirements of section 39 can be precisely complied with.

<sup>25</sup> *Brick Cartage v The Queen*, (1965) 1 Ex. C. R. 102.

<sup>26</sup> *Regina v Gingrich*, (1959) 29 W.W.R. 471.

<sup>27</sup> *The Queen v Devereaux*, (1965) S.C.R. 567.

<sup>28</sup> See Federal Government Rights in the Reserve, *supra*, and Appendix A. There is no specific judicial ruling on the effect of a conditional surrender for lease in a jurisdiction like Quebec.

<sup>29</sup> It is common for the locatee and the band to share in the revenues created by the sale or lease of lands which the locatee held prior to a surrender. There are no ground rules in the *Indian Act* or in the judicial decisions indicating the appropriate division of revenues. The division of revenues does not appear in the lease document (all monies being payable to the Crown) but is likely to appear in the surrender document. For example, see the surrender quoted in *Surrey v Peace Arch*, (1970) 74 W.W.R. 380. There are bands which in 100 per cent of the revenues are paid to the locatee.

(d) A band meeting or referendum must be held. A majority of the electors must approve the surrender. If a majority of all eligible electors do not vote at the band meeting, then a second meeting can be held provided a majority of those voting at the first meeting approved the surrender. In the second meeting a majority of the electors voting will be sufficient to approve the surrender. If a majority of electors did vote in the first meeting and the surrender was approved by those voting but not a majority of all eligible voters, then a "second" meeting cannot be held under section 39 (2). The procedure of the "first" meeting can be repeated.

(e) The Department requires a number of formal documents during this process: (i) documents terminating band member or non-band member interests in the land, if any, (ii) a Document of Information may be required to describe for the band members the process of surrender and the details of the particular surrender, (iii) a survey or, at least, a metes and bounds description of the area to be surrendered, (iv) the surrender document with an adequate description of the land and a clear statement of any qualifications or conditions attached to the surrender, (v) a list of electors, (vi) a band council resolution calling a surrender meeting, (vii) affidavits verifying the vote. The documentation will vary if a referendum is held instead of a band meeting or if the "first" meeting has to be repeated or a "second" meeting held.

The *Indian Act* makes no provisions for reversing a surrender and restoring land to reserve status. The Department had a policy of unsundering land at the request of the band council, so long as the land had not been sold, leased or otherwise encumbered. Within the last couple of years, the Department has adopted a policy of requiring a band vote. In other words, the basic procedure for surrendering is now also the basic procedure for unsundering.

## 6. PERMITS

Section 28 (2) provides that a permit may be issued allowing a non-band member to occupy reserve lands. If the permit is for less than one year it can be issued on the authority of the Minister alone. If it is for longer than one year, it can only be issued by the Minister with the consent of the band council.

For many years the Department issued permits, normally for not longer than five years, to authorize various kinds of land use.<sup>30</sup> There is no express limitation in the section on either the duration of the permit (providing the band council has consented) or on the use of land which can be allowed. In situations where a surrender would turn over control of the land to a provincial government (that is in parts of Quebec and Prince Edward Island) the permit was a common way of authorizing non-member use of reserve land, though its use was not confined to those jurisdictions.

The current policy of the Department is much more restrictive. The Department will not issue permits in situations where, in other contexts, a lease could be seen as the normal method of handling the rights. There are no judicial decisions on the possible scope of permits and there are conflicting legal opinions on what rights can be granted by them. Currently the Department is only prepared to issue permits (a) to cover the temporary use of land pending completion of a lease or right-of-way, (b) to facilitate dis-

posal of wild grass, dead or fallen timber, sand, gravel, clay and other non-metallic substances on or under a reserve, pursuant to s. 58 (4), (c) to permit the use of the roads on a reserve or the use of reserve lands for logging roads, (d) for certain water pipeline purposes. There appears to be some disagreement within the Department as to even this list and it may be too broad or too restrictive. Some prefer to say that permits can only be granted when no interest in land or no exclusive right to use land would be created. Department policy appears to be unstable on this point at the present time and some new formulation of the role of permits may occur.

## 7. LOCATEE LEASES

Section 58 (1) (b) and (3) permits the Minister to lease land held by a band member under a Location Ticket or Certificate of Possession. Although the section does not require the consent of the band council, it has been the policy or custom of the Department for a number of years to seek band council concurrence in such a lease. In a recent policy directive, the Department has stated a policy of requiring evidence that the band as a whole is willing to accept the effect of long term locatee leases for development or locatee leases which would have a significant impact on the character or quality of life on the reserve. In such a situation the band would not be approving a surrender, but simply advising the Minister of his views.

Section 58 (1) (b) and (3) speaks of leasing for the "benefit" of the Indian holding the allotment. In a surrender for lease situation the individual Indian allotment ends with the surrender (subject to the terms of the surrender) even if the allottee shares in the revenues from the lease of the surrendered lands. A locatee lease under section 58 (1) (b) or (3) is obviously quite different. It is based on the continuing existence of the individual Indian interest. If the Indian dies during the currency of the lease the Department considers that the lease continues to the "benefit" of the devisee or assignee of the deceased.

In recent years the locatee lease provision has been used as one method of establishing band control of enterprises without the need for a surrender. One or more individual members of the band will be allotted land which they will hold in trust for the band. The allotted land will then be leased under the authority of section 58 (1) (b) or (3). The revenues will go to the band through the locatees. The use of the locatee lease has largely replaced permits in Quebec, to avoid the problem with surrenders which exists in that province and Prince Edward Island.<sup>31</sup>

## 8. THE INDIAN LANDS REGISTRY

The *Indian Act* provides that there shall be a Reserve Land Register (s. 21) and a Surrendered Lands Register (s. 55). Beginning on January 1st, 1968, the Department has maintained the Indian Lands Registry in Ottawa which includes both the Reserve Land Register and the Surrendered Lands Register. There is no assurance that the pre-1968 documentation in the registry is complete, though considerable work has gone into the task of assembling that material.

The registry attempts to be compatible with the provincial deed registry, land registry and title registry systems in the various provinces of Canada, so that the documentation could be transferred to the provincial systems if that decision should ever be made. It is generally modelled on the

<sup>30</sup> See, for example, the use of permits which occurred in the history of the land dealings in the *Devereaux* case, (1965) S.C.R. 567.

<sup>31</sup> See Federal Government Rights in the Reserve, *supra*, and Appendix A.

Torrens or title registry systems, though it has no legislative basis to guarantee titles.<sup>32</sup> The Indian Lands Registry Practices Manual, prepared for internal use in the Department, lists eleven types of claims capable of registration: Allotment, Amendment, Cancellation, Caveat, Lease, Mortgage, Permit, Relinquishment, Sale, Surrender, Transfer. Some comments can be made about the process of registering some of these interests and other features of the Indian Lands Registry.

### CAVEATS

A caveat is a notice of the existence of a claim to land. In theory, at least, the filing of the caveat in no way strengthens the legal basis of the claim. It only gives notice of the existence of the claim. The caveat will last for five years and can be renewed. It can be made subject to a "show cause" procedure at the instigation of the person against whose interests the caveat is registered.

A caveat will be rejected by the registry if it is in conflict with a previously registered encumbrance. This is a general policy of the registry in relation to any interest being registered. In turn, a registered caveat will prevent the registration of any subsequent interest unless that subsequent interest is registered subject to the caveat and is not in conflict with the interest claimed in the caveat. Since there is no legislative system guaranteeing registered rights on the basis of priority, the only way the Indian Land Registry can approximate that Torrens-style guarantee is to refuse to register subsequent interests which would be held to be inconsistent with the survival of the claim which was the subject of the caveat.

Following Torrens practices, the Registrar does not seek to judge the legal validity of the claim sought to be registered by way of caveat (so long as it is a claim to an interest in land). The only formal control on claims to be registered by way of caveat appears to occur in the following paragraph of the affidavit which the applicant for registration of a caveat must swear:

That the claim mentioned in the above caveat is not to the best of my knowledge, information and belief founded upon a writing or written order, contract or agreement for the purchase or delivery of any chattel or chattels within any prohibition.

Presumably this would serve to bar caveats based on claims rendered invalid by section 89 of the *Indian Act*. Otherwise, claims are registerable by caveat if they claim an interest in specific reserve or surrendered lands. A mechanic's lien, issued under provincial law, claiming against leased lands, could be registered by way of caveat. A debenture involving a specific charge on the land (in effect a mortgage of specific surrendered lands) is registerable by way of caveat. Although it has not yet been attempted, presumably a "buckshee" lease (a direct lease between an Indian and a non-band member, which would be invalid because of conflict with s. 28 (1)) could be registered by way of caveat because it claims an interest in land. A certificate of *lis pendens* can be registered by way of caveat (a writ of *lis pendens* is considered directly registerable). A maintenance order was registered by caveat against a husband's on-reserve allotment, presumably because the court order stated the maintenance payments were to be "secured by the registration of this judgment" against the allotment.

The Registrar has established a "show cause" procedure in relation to caveats. The person against whose interest the caveat has been filed can register a document requesting the Registrar to send a notice to the caveator requiring the caveator to show cause why the caveat should not be removed. Upon the registration of this request document, the Registrar will notify the caveator, giving that person 30 days within which to respond. If the caveator does not respond, the caveat will be struck from the register. If the caveator responds in writing, giving reasons why the caveat should not be withdrawn, the Registrar will determine whether the caveator has made a valid case. It will depend upon the Registrar's determination whether the caveat will remain or not. It should be noted that this procedure does not envisage a reference to the courts, the normal equivalent procedure in the provincial Torrens systems.

### LEASES

Sub-leases or assignments of leases require Ministerial approval before they can be registered. If a head lease, which has been approved by the Minister, specifies that sub-leases can be entered into without further Ministerial approval, they can be registered without Ministerial approval.

### MORTGAGES

Only a lessee or the purchaser under an agreement for sale would have sufficient interest in reserve or surrendered lands to be able to mortgage his interest to anyone other than the band or a band member.

There are two kinds of mortgages. The first, the standard mortgage, does not itself involve a transfer of the interest of the mortgagor unless there is a default on the mortgage and a foreclosure. The second kind can be called a mortgage by way of assignment or a common law mortgage. The interest of the mortgagor is transferred to the mortgagee. Upon completion of the obligations in the mortgage, the interest is reconveyed to the mortgagor.

The Minister must approve a mortgage by way of assignment before it can be registered. In addition, the Minister's consent should be obtained to a standard mortgage before registration because of the possibility of foreclosure. As in the situation of a head lease (noted above) the initial consent of the Minister to the document (head lease, standard mortgage, mortgage by way of assignment) will probably be treated by the Registrar as sufficient consent under section 54 to enable the registration of a sub-lease, an assignment by way of foreclosure of a standard mortgage or an assignment by way of fulfillment of a mortgage by way of assignment. It is not specifically determined whether the Minister can give such advance, conditional consent under section 54, but the practice of the Registrar seems to permit such registrations. In practice there have yet to be problems on any of these points.

It seems fair to say that no procedure for foreclosure on a standard mortgage has yet been established. There appear to be three alternative possibilities. A court order of foreclosure may be sufficient, assuming that the Minister's consent to the mortgage is sufficient consent for the registration of the assignment that will take place on foreclosure. Alternatively, the court may make a foreclosure order which would be dependent upon the consent of the Minister. It is possible that a court might not be willing to act in the situation, though there is a precedent in a closely related situation.<sup>33</sup> The second alternative would involve the mortgagor demonstrating to the Registrar that there has been a breach of

<sup>32</sup> It is expected that at least a set of regulations under the *Indian Act* will eventually form a more complete basis for the registry, if not special legislation.

<sup>33</sup> *Antoine v Antoine*, British Columbia Supreme Court, Vernon, January 26th, 1968, unreported. See section The Courts and Land Holding on a Reserve.

the mortgage and presenting an assignment document for registration on the basis of the breach (and without the consent of the mortgagor or the Minister). The third alternative is similar to the second, but involves an order of the Minister, rather than a decision of the Registrar. In practice this problem has not yet had to be resolved. The existing legislation gives no clear framework for its resolution. No cases involving the enforcement of a mortgage have gone to court. The Department has no wish to frustrate mortgages by withholding Ministerial consent to assignments. The Land Operations Handbook, prepared for internal use in the Department, takes the position that such consent should not be unreasonably withheld by the Minister. A restrictive attitude on consent would reduce the value of the lease and therefore of the lease rental which could be expected.

#### TRANSFERS AND ASSIGNMENTS

Section 24 provides that no transfer of an allotment from one band member to another is effective without the approval of the Minister.

Section 54 provides that no assignment of an interest in surrendered lands shall be transferred without the consent of the Minister. Section 55 (2) provides that no conditional assignment shall be registered in the surrendered lands registry.

#### PRIORITY

Section 55 (4) provides that an assignment registered in the surrendered lands registry is valid against an unregistered assignment or an assignment subsequently registered. This is the only express priority provision in the two sections dealing with the Indian land registries. Since a transfer or assignment of interests in a reserve or surrendered lands requires Ministerial approval under either section 24 or 54, the problem of priorities takes on a different aspect than in a provincial land titles system. The Department controls the validity of the transfer documents because of the requirement of approval. It therefore has an opportunity to ensure that they are registered in proper sequence and an opportunity to prevent conflicting transfers and assignments from coming into existence.

#### DEPOSITING

The Registrar is prepared to have certain documents, which cannot be registered, deposited in the registry for information purposes only. A debenture which contains a floating charge against the assets of a company which, among other assets holds a lease of surrendered lands, could be deposited, though it could not be registered even by way of caveat.

#### CERTIFICATE OF ENCUMBRANCES

As in other registry systems, the Registrar will issue a Certificate of Encumbrances, listing the interests registered in relation to specific reserve or surrendered lands.

#### PROVINCIAL REGISTRY SYSTEMS

In two instances, both in British Columbia, head leases and sub-leases for subdivisions on surrendered lands have been registered in provincial land registry systems as well as in the Indian Lands Registry. This was done at the instigation of the bands involved and was done solely for marketing reasons. The rationale was that purchasers of the leasehold interests would feel surer of the transaction if their interests

appeared in the provincial system. The Department does not favor such use of provincial registry systems, feeling that it could mislead people as to the role of the Indian Lands Registry. There is also some concern that by acquiescing in provincial registration some aspects of provincial land legislation, which would not otherwise apply to Indian lands, might be held to apply.

#### 9. THE COURTS AND LAND HOLDING ON A RESERVE

The land holding system on reserve and surrendered lands is characterized by a continuing discretionary power in the Minister. Interests once acquired are as stable as property interests off the reserve, but any transactions involving those interests require approval by the Minister. Given this continuing discretionary power in relation to transactions, can the regular courts become involved in resolving disputes in which different parties claim rights to reserve or surrendered lands? Four judgments in the years between 1867 and 1937 ruled that the courts could play no role in such disputes between Indians.<sup>34</sup> In 1968 the British Columbia Supreme Court adjudicated on a disputed transaction between two Indians involving reserve lands. The court ruled that one party had agreed to transfer his allotment to the other and had been paid and must now, in fact, transfer the allotment. Mr. Justice Ruttan ruled:

If the Department of Indian Affairs for some reason will not approve the transfer then of course the plaintiff is entitled to the return of any monies she has paid and may well be entitled to some damages because the failure to complete the transfer is not her fault, but if there is any fault it would be that of the defendant.<sup>35</sup>

The Judge clearly did not feel he had the power to order the Department to accept the transfer, but could adjudicate on the civil liability that would arise out of the frustration of the contract. He ruled that the vendor must sign the transfer document and that if he did not, the registrar of the court was empowered to sign on his behalf. The vendor refused to sign. The registrar completed the transfer document, which was approved by the Minister of Indian Affairs. This resolution of the issue does not detract from the fact that the court could not have ordered the Minister to consent to the transfer.

In the tax cases, discussed in footnote 12, the courts appear to have realized their inability to order transfers of non-Indian interests in reserve or surrendered lands.

While it seems clear that the courts cannot order the transfer of any rights to reserve or surrendered lands, held by Indians or non-Indians, this does not affect the ability of the courts to enforce the property rights which have been granted pursuant to the *Indian Act* in the exercise of the powers of the bands and of the Department.<sup>36</sup>

#### 10. BAND MANAGEMENT OF RESERVES AND SURRENDERED LANDS

Certain bands have taken over some of the powers of management of their lands under the provisions of the *Indian Act*. Three sections of the Act should be noted.

<sup>34</sup> *Bastin v Hoffman*, (1867) 17 L.C.R. 238; *Fisher v Albert*, (1921) 64 D.L.R. 153; *Patton v Allen*, (1924) 30 R.L. 300; *Delorimier v Cross*, (1937) 62 Que. K. B. 98.

<sup>35</sup> *Antoine v Antoine*, British Columbia Supreme Court, Vernon, January 26th, 1968, unreported.

<sup>36</sup> The courts could uphold rights of quiet enjoyment and rule on questions of trespass.

## SECTION 60 (1).

This section reads as follows:

The Governor in Council may at the request of a band grant to the band the right to exercise such control and management over lands in the reserve occupied by that band as the Governor in Council considers desirable.

By section 81 (i) it is clear that section 60 (1) can involve authorizing the band to maintain a reserve lands register parallel to or in place of the Department's Reserve Lands Register. The section may or may not extend to unsold surrendered lands, depending upon whether such lands are technically "reserve" lands or not. It would seem reasonable that the following powers could be transferred to the band under the section:

(a) the right of the Minister to confirm allotments and issue Certificates of Possession and Certificates of Occupation (s. 20 and s. 49),

(b) the power to approve transfers of possession of reserve land between band members (s. 24),

(c) the power to correct Certificates of Possession (s. 26) or cancel them with the consent of the holder (s. 27),

(d) the power to issue permits (s. 28 (2)),

(e) the power to permit expropriations under provincial law (s. 35 (1)),

(f) the issuance of locatee leases (s. 58 (1) (b) and (3)). If surrendered lands are part of the reserve, then the powers granted to bands under section 60 (1) could include the power to manage, sell and lease under section 53 (1) and the power of approving assignments under section 54.

## SECTION 53 (1)

This section gives the Minister or a person appointed by the Minister the power to manage, sell, lease or otherwise dispose of surrendered lands in accordance with the *Indian Act* and with the terms of the surrender. The present wording allowing the Minister to delegate his authority was inserted after the courts invalidated certain leases which had been approved by Indian Affairs staff people.<sup>37</sup> In 1975 the Minister delegated his powers under section 53 (1) to four members of the Sechelt Indian Band in British Columbia in relation to a subdivision established on surrendered reserve lands. They are able to sign leases with non-Indians as agents of the Crown. To date this is the only example of a delegation of authority under section 53 (1) to persons outside the Department of Indian Affairs.

## SECTION 69 (1)

This section enables the Governor in Council to permit a band to control, manage and expend its revenue monies. The Department, acting on legal advice, has concluded that this section enables bands to collect rents on reserve and surrendered lands. Four or five bands in British Columbia are collecting their revenues on the authority of this section.

## 11. PERSONAL PROPERTY ON THE RESERVE

The *Indian Act* creates special exemptions from seizure for Indian personal property on reserves:

s. 89 (1) Subject to this Act, the real and personal property of an Indian or a band situated on a reserve is not subject to charge, pledge, mortgage, attachment, levy, seizure, distress or execution in favour or at the instance of any person other than an Indian.

(2) A person who sells to a band or a member of a band a chattel under an agreement whereby the right of property or right of possession thereto remains wholly or in part in the seller, may exercise his rights under the agreement notwithstanding that the chattel is situated on a reserve.

Certain seizures of Indian property on reserves are permitted under section 89. The British Columbia County Court, in *Williams v Joe*<sup>38</sup>, applied provincial laws to the seizure of property of an Indian on a reserve in execution of a judgment obtained by another Indian.

The cases on section 89 mostly focus on "situs" problems. Are debts located at the domicile of the payee or at the office of the creditor?<sup>39</sup> Are debts arising from the sale of produce grown on reserves to be considered, because of their origin, property situated on reserves?<sup>40</sup>

The exemption in section 89 does not extend to non-Indians. If a company is functioning on a reserve is it subject to provincial laws relating to seizure and sale of personal property? While section 89 defines the extent of an Indian exemption, it makes no explicit provision for the enforcement of the seizures, distresses and executions permitted. By implication it accepts provincial provisions, for they are the only ones available. If provincial laws apply to the seizure of Indian personal property located on reserves (in the situations where seizures are permitted by section 89) surely they would also apply to the seizures of non-Indian personal property located on reserve lands.

## 12. INDIAN ECONOMIC DEVELOPMENT FUND

A special Indian loan fund was first established in 1938. Section 70 of the present *Indian Act* makes provisions for loans to Indians. The legislative basis of the present Indian economic development fund lies, however, in vote L53b of Appropriation Act No. 1, 1970 and the regulations enacted under the authority of that Act. The current regulations were enacted in 1972.<sup>41</sup>

The Act waives the provisions of section 89 of the *Indian Act* for any loans made pursuant to it. The regulations provide for direct loans to Indians or non-Indians in certain situations that may contribute to the economic development of Indians. In certain circumstances the regulations provide for a Ministerial guarantee of loans.

As of April, 1975, the Fund had direct loans totalling sixty million dollars, grants and contributions totalling eighteen million dollars and had guaranteed loans in the amount of thirty million dollars.

<sup>37</sup> *St. Ann's Island Shooting Club v The King*, (1950) S.C.R. 211; *R. v Cowichan Agricultural Society*, (1951) 1 D.L.R. 96.

<sup>38</sup> 5 W.W.R. (N.S.) 97.

<sup>39</sup> *Avery v Cayaga*, (1913) 13 D.L.R. 275; *Feldman v Jockes*, (1935) 74 Que. S.C. 56.

<sup>40</sup> *Armstrong v Harris*, (1924) 1 D.L.R. 1043; *Simkevitz v Thompson*, (1910) 16 O.W.R. 865.

<sup>41</sup> P.C. 1972-1498, July 4, 1972, SOR/72-247, July 13, 1972, Vol. 106, No. 14, Canada Gazette Part II.

# Provincial Laws and Indian Reserves

There are three propositions which appear to guide the courts on the question of the application of provincial laws to Indian reserves:

1. The provinces cannot pass legislation *in respect of* Indian reserves. Conversely, the only provincial laws which can apply to Indian reserves are those which are of general application. They must not pick out reserves for special treatment.<sup>42</sup>
2. The provinces cannot pass legislation which *affects* Indian reserves *as* reserves. Provincial legislation, of general application, may deal with a subject which affects Indian reserves in their character as reserves. Those laws will not apply to reserves.
3. The provinces cannot pass legislation which will conflict with the *Indian Act*. It appears that there are provincial laws which meet the first two tests, but are in conflict with the *Indian Act*. Such laws will be classified by the courts as falling within a "double aspect area" in which both the provinces and the federal government have constitutional authority to legislate. The particular federal and provincial powers overlap. The "occupation of the field" by federal legislation prevents the provincial laws from operating. The *Indian Act* provisions will prevail.

It will be clear from these points that the courts have not subscribed to what might be called an "enclave" theory.<sup>43</sup> There is no sweeping denial of any application of provincial laws to Indian reserves. Indian leaders often assert that no provincial laws apply on reserves. Provincial and federal government people often assert that all provincial laws apply on reserves, unless there is a conflict with the *Indian Act*. The judicial answer to the question appears to lie between those positions.

In discussing the question of provincial laws and Indian reserves, three general observations seem useful. Firstly, the *Indian Act* has been consistently recognized by the courts as valid legislation, enacted within the limits of federal legislative jurisdiction. No piece of federal Indian legislation has been declared by the courts to be beyond federal powers<sup>44</sup>. Secondly, the courts in Canada have been reluctant to invalidate legislation. In the absence of unmistakable legislative conflict, the courts have preferred to reconcile the co-existence of federal and provincial legislation. This has been done by declaring legislative areas to be "double aspect" areas and ruling that particular federal and provincial laws are not in conflict. Such rulings are part of a general pattern of judicial deference to the legislatures and Parliament. Thirdly, Canadian courts are pragmatic, not theoretical. Judicial statements about the legal theory being applied in a particular case are often too general to be of specific help in subsequent cases.<sup>45</sup> Our courts seek a practical resolution of questions. In the area of applying provincial laws to federal entities like Indian reserves, national railways, national harbours and interprovincial pipelines, they are only

prepared to exempt the federal entity from provincial laws if they feel, as a practical matter, that the particular provincial law could seriously interfere with the functioning of the federal entity. A particular provincial law may apply to one federal entity and not another. A particular provincial law may affect a national railway in a much different way than it would affect an Indian reserve.

There are a number of decisions dealing with the application of provincial laws to Indian reserves. They can be supplemented with general principles derived from decisions on other federal entities. In this way we can assemble a fairly clear picture of the kind of provincial laws that will be applied to Indian reserves. The following eight propositions will attempt to explain the *Indian Act* provisions and the decided cases.

## 1. FEDERAL LEGISLATION CAN APPLY TO BOTH INDIANS AND NON-INDIANS ON RESERVES

Non-Indians have no immunity from the provisions of the *Indian Act* if they are on a reserve. The liquor sections are a clear example of the *Indian Act* applying to non-Indians on the reserves. Certain of the powers given to the Governor in Council to make regulations and to the band councils to make by-laws would clearly affect non-Indians as well as Indians on a reserve.

## 2. PROVINCIAL LEGISLATION IN RELATION TO GAME HAS NOT BEEN APPLIED TO INDIANS ON RESERVES, EXCEPT AS AN INTERPRETATION OF THE PROVISIONS OF THE NATURAL RESOURCES TRANSFER AGREEMENTS IN THE THREE PRAIRIE PROVINCES

In 1915 the British Columbia Supreme Court upheld on-reserve Indian hunting rights in the *Jim*<sup>46</sup> case. That decision has been frequently cited since and has never been judicially criticized. In 1923 the Manitoba Court of Appeal in the *Rodgers* case<sup>47</sup> ruled that provincial law could not interfere with on-reserve Indian trapping by requiring an on-reserve trapper to be licenced. In 1975 the Nova Scotia appeal court in the *Isaac* case<sup>48</sup> ruled that hunting by Indians on reserves constituted a use of reserve land and was beyond the legislative jurisdiction of the province. There are no cases going against these decisions.

Some confusion has resulted from the Supreme Court of Canada decision in the *Cardinal* case<sup>49</sup> in which an Indian was convicted under provincial laws for selling wild meat to a non-Indian on an Indian reserve. The decision was later followed by a provincial court judge in Alberta who applied a provincial prohibition to an Indian who had kept two live

<sup>42</sup> See generally, Lysyk, The Unique Constitutional Position of the Canadian Indian, 45 Canadian Bar Review, 513.

<sup>43</sup> See *Cardinal v Attorney General of Alberta*, (1974) S.C.R. 695, where the court divides on the use of the term "enclave". See Sanders, Hunting Rights—Provincial Laws—Application on Indian Reserves, (1973-74) 38 Saskatchewan Law Rev. 234.

<sup>44</sup> The cases involving the *Canadian Bill of Rights* never included any limitations on the constitutional power of the federal government. Federal power to regulate the off-reserve drinking of Indians was never challenged in *Regina v Drybones*, (1969) 9 D.L.R. (3rd) 473.

<sup>45</sup> The *Cardinal* case (see footnote 43) is a good example of this problem.

<sup>46</sup> (1915) 26 C.C.C. 236.

<sup>47</sup> (1923) 3 D.L.R. 414.

<sup>48</sup> Nova Scotia Supreme Court, Appeal Division, November 19, 1975, as yet unreported.

<sup>49</sup> See footnote 45.

bear cubs on the reserve.<sup>50</sup> A careful reading of the judgments in the *Cardinal* case shows that the ruling resulted from an application of the specific wording of the Natural Resources Transfer Agreements. This means that the decision is limited to the three Prairie provinces, is limited to provincial laws respecting game and does not affect the rights of Indians to hunt for food on or off reserves at all times of year. The Nova Scotia appeal court has recently confirmed this interpretation of the *Cardinal* case in the *Isaac* decision.<sup>51</sup>

The hunting cases are not a general guide to how the courts will apply other provincial laws to Indian reserves. Hunting is so closely associated with Indians that hunting rights have been described by the courts as rights "peculiar" to the Indians.<sup>52</sup> This has created some confusion as to whether the decisions in the *Jim* and *Rodgers* cases in particular, are decisions in relation to Indians or decisions in relation to the use of reserve lands.<sup>53</sup>

### 3. SOME PROVINCIAL LEGISLATION IS INCORPORATED BY REFERENCE UNDER THE INDIAN ACT AND MADE TO APPLY, AS FEDERAL LEGISLATION, ON INDIAN RESERVES

The best example of this legislative borrowing of provincial laws occurs in the area of motor vehicle legislation. Under the authority of section 73 (1) of the *Indian Act*, the Governor in Council has enacted the Indian Reserve Traffic Regulations.<sup>54</sup> Both the wording of the section and of the regulations indicates that the provisions are of general application. They are not confined to Indians. Section 6 of the regulations provides:

The driver of any vehicle shall comply with all laws and regulations in force from time to time in the province in which the Indian reserve is situated relating to motor vehicles, except such laws or regulations as are inconsistent with these regulations.

The Ontario Court of Appeal has ruled that in an on-reserve driving situation, it is incorrect to charge a person for the commission of an offence under provincial law. The charge must be laid as a charge under the *Indian Act* and the Indian Reserve Traffic Regulations.<sup>55</sup>

There are a number of reported decisions applying provincial driving laws on reserves as a result of the *Indian Act* and the Indian Reserve Traffic Regulations.<sup>56</sup> The *Bear* case<sup>57</sup> is an example of provincial liquor laws being applied on an Indian reserve as a result of *Indian Act* provisions incorporating provincial laws. The estates sections also contain provisions adopting provincial laws in certain situations.<sup>58</sup>

There is another situation where the *Indian Act* implicitly relies on provincial laws. In *Williams v Joe*<sup>59</sup>, as already noted, a British Columbia County Court applied provincial procedures to a seizure of personal property on a reserve in a dispute between two Indians. Because the *Indian Act* allowed such an order to be made, the court used the only existing procedures—those found in provincial law—to accomplish the intention of the *Indian Act*. Three judges in a recent Supreme Court of Canada decision ruled that since the *Indian Act* referred to adoption, it must have intended that provincial adoption laws would apply to Indians, there being no federal adoption act.<sup>60</sup>

### 4. INDIANS LIVING ON RESERVES ARE SUBJECT TO THE PROCESSES OF PROVINCIAL LAWS SO LONG AS THERE IS NO CONFLICT WITH THE PROVISIONS OF THE INDIAN ACT

A court can apply provincial law and give judgment to a creditor against an Indian debtor, though the Indian lives on a reserve.<sup>61</sup> Provincial laws can be used to garnishee the off-reserve bank account of an Indian living on a reserve.<sup>62</sup> A court can order an Indian who lives on the reserve to appear to be examined as to what assets he may have on which a judgment, obtained under provincial laws, may be realized.<sup>63</sup> Provincial laws related to judgment debts extend to Indians on the reserve, but cannot directly<sup>64</sup> or indirectly<sup>65</sup> touch property on the reserve which is exempt from seizure under the *Indian Act*.

In one case a provincial police officer was held to be acting within his duty in entering a reserve to arrest an Indian for a speeding offence which had just taken place off the reserve. The officer's "duty", his authority for arresting, flowed from provincial laws.<sup>66</sup>

### 5. SECTION 88 OF THE INDIAN ACT, AS CURRENTLY INTERPRETED, IS NOT OF ASSISTANCE IN DETERMINING WHICH PROVINCIAL LAWS APPLY TO INDIAN RESERVES.

Section 88 reads:

Subject to the terms of any treaty and any other Act of the Parliament of Canada, all laws of general application from time to time in force in any province are applicable to and in respect of Indians in the province, except to the extent that such laws are inconsistent with this Act or any order, rule, regulation or by-law made thereunder, and except to the extent that such laws make provision for any matter for which provision is made by or under this Act.

<sup>50</sup> *R v Janvier*, Alberta Provincial Court, Cold Lake, December, 1973, Provincial Judge Hopkins, unreported.

<sup>51</sup> See footnote 48.

<sup>52</sup> *Regina v White and Bob*, (1964) 52 W.W.R. (N.S.) 193, affirmed on appeal to the Supreme Court of Canada, 52 D.L.R. (2d) 481.

<sup>53</sup> The *Jim* case is criticized on this basis by Lysyk, see footnote 42.

<sup>54</sup> P.C. 1954-1368, amended by P.C. 1968-806.

<sup>55</sup> *R v Isaac*, (1973) 3 O.R. 833.

<sup>56</sup> *R v Johns*, 39 W.W.R. (N.S.) 49; *R v Johns* (No. 2), 45 W.W.R. (N.S.) 65; *R v Spear Chief*, (1963) 45 W.W.R. (N.S.) 161; *R v Isaac*, (1973) 3 O.R. 833.

<sup>57</sup> (1968) 63 W.W.R. (N.S.) 754.

<sup>58</sup> s. 44.

<sup>59</sup> 5 W.W.R. (N.S.) 97.

<sup>60</sup> *Natural Parents v Superintendent of Child Welfare*, Supreme Court of Canada, October 7, 1975, as yet unreported.

<sup>61</sup> *Ex Parte Tenasse*, (1931) 1 D.L.R. 806, 2 M.P.R. 523.

<sup>62</sup> *Avery v Cayuga*, (1913) 13 D.L.R. 275, 28 O.L.R. 517.

<sup>63</sup> *Campbell v Sandy*, (1956) 4 D.L.R. (2d) 754, (1956) O.W.N. 441.

<sup>64</sup> *Simkevitz v Thompson*, (1910) O.W.R. 865; *Armstrong Growers v Harris*, (1924) 1 W.W.R. 729, (1924) 1 D.L.R. 1043; *Feldman v Jocks*, (1935) 74 Que. S.C. 56; *Crepin v Delorimier*, (1929) 68 Que. C. J. 36.

<sup>65</sup> *Re Caledonia Milling Co v Johns*, (1918) 42 O.L.R. 338. This ruling was limited by the judgment in *Campbell v Sandy*, supra.

<sup>66</sup> *R v Williams*, (1958) 120 C.C.C. 34.

The federal government has jurisdiction over "Indians" and over "Lands Reserved for the Indians." Section 88 only refers to the application of provincial laws to "Indians". Three court of appeal decisions have held that section 88 is not concerned with the question whether particular provincial laws can apply to Indian reserves.<sup>67</sup>

Additionally, certain recent judgments have tended to submerge section 88 into the general constitutional rules concerning the application of provincial laws. While Chief Justice Laskin of the Supreme Court of Canada recently held that section 88 constituted an incorporation by reference of certain provincial laws, the court was evenly divided on the question.<sup>68</sup> Mr. Justice Martland ruled that the section was declaratory:

The section is a statement of the extent to which provincial laws apply to Indians.

He concurred with a statement in the British Columbia Court of Appeal:

In my opinion, Sec. 88 does not have the effect of converting provincial legislation to federal legislation whenever it applies to Indians. Sec. 88 simply defines the obligation of obedience that Indians owe to provincial legislation. Parliament is neither delegating legislative power to the province nor adopting provincial legislation as its own by declaring in Sec. 88 what was true before Sec. 88 existed, namely, that Indians are not only citizens of Canada but also are citizens of the province in which they reside and are in general to be governed by provincial laws.

#### 6. NON-INDIAN OCCUPANTS OF INDIAN RESERVE LAND CAN BE TAXED UNDER PROVINCIAL LAW ON THE BASIS OF THE VALUE OF THE RESERVE LAND WHICH THEY OCCUPY

Some provinces have legislation which permits the taxation of non-Indian occupants of reserve lands, while others do not.<sup>69</sup> Legislation permitting such taxation was terminated in Saskatchewan and Ontario within the last few years.<sup>70</sup> There are court decisions in Ontario, British Columbia, Manitoba and Quebec upholding such provincial laws.<sup>71</sup> The tax may be calculated on the basis of the value of improvements or on the value of the land occupied. Provincial laws do not claim that the land itself could be sold in default of payment. In this way the courts have defined the tax as a tax on the person or the occupier, not a tax on the land. Since recovery of the taxes would have to involve assets of the occupant other than the right to occupy the land, technically this is not an example of provincial laws applying to Indian reserve lands.

#### 7. THE COURTS HAVE TENDED TO APPLY PROVINCIAL LAWS TO NON-INDIANS ON A RESERVE WHERE THERE IS NO FEDERAL LEGISLATIVE OCCUPATION OF THE FIELD

There are five judgments, scattered over fifty-five years, in which provincial laws were applied to non-Indians on reserves, usually without any real analysis of the constitutional question involved. In 1911 a claim was brought against an Indian agent for the negligent operation of a threshing machine on an Indian reserve in Saskatchewan. The machine did not comply with provincial fire safety requirements and the agent was held responsible under the terms of the provincial law.<sup>72</sup>

In 1929 a lawyer and an Indian agent went hunting on the Kamloops Indian Reserve in British Columbia. At the instigation of some local Indians, both were charged under the provincial *Game Act*. In their defence they argued that the provincial law could not apply on the reserve. The *Indian Act* of the day provided that no person (or Indian other than an Indian of the band) could "reside or hunt upon, occupy or use any land" on a reserve without the permission of the Superintendent General of Indian Affairs. A person hunting without permission could be prosecuted under the *Indian Act* for trespass. The charges against the agent and the lawyer were tried separately, enabling the lawyer to defend his hunting companion. The Indian agent was convicted. The second conviction, against the lawyer, was appealed to the British Columbia Court of Appeal where five appeal judges all wrote separate reasons for judgment. The basic ruling appears to have been that the matter of non-Indians hunting on reserves is a "double aspect" area, which could be the subject of either provincial or federal legislation. Since the *Indian Act* provision was a "trespass" provision and the provincial law a "game" law, the two were held not to be in conflict. The "field", in other words, was not completely "occupied" and the two pieces of legislation could co-exist. If permission to hunt had been given under the *Indian Act* by the Superintendent General allowing the two to hunt on the reserve then, perhaps, the "field" would have been occupied. Martin, J.A., in a pointed aside, commented:

That it would not be lawful for the Superintendent to set up a shooting party on an Indian Reserve for the benefit of himself and his friends or allow any one else to do so in a closed season or at any time, may be conceded, though it is not for a moment to be presumed that he would sanction such improper proceedings.<sup>73</sup>

In many ways, this explains what the court was doing. The agent had abused his power. The courts were not going to let the agent and his lawyer friend off on a jurisdictional point.

<sup>67</sup> *R v Johns*, 39 W.W.R. (N.S.) 49; *R v Isaac*, (1973) 3 O.R. 833; *R v Isaac*, Nova Scotia Supreme Court Appeal Division, November 19, 1975, as yet unreported.

<sup>68</sup> *Natural Parents v Superintendent of Child Welfare*, Supreme Court of Canada, October 7, 1975, as yet unreported.

<sup>69</sup> See footnote 12 for judicial decisions on this question.

<sup>70</sup> There has been agitation on the question in British Columbia, but no alteration of provincial law has yet occurred.

<sup>71</sup> See footnote 12.

<sup>72</sup> *Carter v Nichol*, (1911) 1 W.W.R. 392.

<sup>73</sup> *R v McLeod* (the Indian Agent), (1930) 2 W.W.R. 37; *R v Morley* (the lawyer), (1932) 4 D.L.R. 483 at 502.

In 1933 an Alberta District Court convicted a non-Indian under a provincial law for selling food on a reserve at an Indian stampede without a provincial licence. The judge held that the *Indian Act* did not deal with such a question and therefore provincial law could apply to the non-Indian on the reserve.<sup>74</sup>

In 1966 a British Columbia County Court Judge convicted a non-Indian, a company located on a reserve, under a local noise abatement by-law. The judge rejected the jurisdictional argument on the basis that the accused person was not an Indian.<sup>75</sup>

It is tempting to suggest, on the basis of these cases, that the courts will distinguish between Indians and non-Indians when dealing with the question of the application of provincial laws on reserves. That does not, however, fit with the analysis in two more recent decisions, *Peace Arch* and *Baert Construction*, which seem the best guidance at the present time. The earlier cases form no connected line of authority and none present an adequate analysis of the constitutional questions involved. They represent an understandable reaction by the courts that non-Indians should not find sanctuary on an Indian reserve. The better approach, it is suggested, is for the courts to analyze the question of the application of provincial laws on Indian reserves without regard to whether the persons involved are Indians or non-Indians. The relevance of the person being an Indian is solely in those situations where the legislation is in a "double aspect" area and the *Indian Act* has "occupied the field" only in relation to Indians.

## 8. IN CASES INVOLVING COMMERCIAL ACTIVITY ON INDIAN RESERVES, THE COURTS WILL APPLY CERTAIN PROVINCIAL LAWS TO THE RESERVE AND REFUSE TO APPLY CERTAIN OTHER PROVINCIAL LAWS, IN MUCH THE SAME WAY AS THE COURTS HAVE HANDLED QUESTIONS OF PROVINCIAL LAWS AND THEIR APPLICATION TO NATIONAL RAILWAYS, INTERPROVINCIAL PIPELINES AND OTHER ENTITIES WITHIN FEDERAL LEGISLATIVE JURISDICTION

The decision to apply or not to apply a particular law will result from a consideration of its impact on the Indian reserve and on the *Indian Act*.

There are two Quebec cases in the 1940's dealing with the application of provincial sales tax legislation to Indian store owners on a reserve who sold merchandise to Indians and non-Indians. In both cases provincial sales tax legislation was applied, though the rationale differs in the two decisions. In the *GrosLouis* case<sup>76</sup> the court ruled that in selling to a non-Indian, the Indian had theoretically taken himself off the reserve and therefore lost any tax exemption given by the *Indian Act*. This fanciful rationale was ignored the following year in the *Williams* case.<sup>77</sup> There it was ruled that the provincial law was not in conflict with the *Indian Act*. It

was suggested that perhaps an Indian purchaser would not have to pay the sales tax. Both of these cases were decided by the Quebec Court of Sessions of the Peace, the equivalent to a police magistrate's court. No other cases appear to have been decided on the application of provincial sales taxes to on-reserve transactions.

The first of the modern cases is *Surrey v Peace Arch*<sup>78</sup>. A company leased reserve land for the purposes of building an amusement park for the general public. The question arose as to whether the company had to comply with provincial zoning and health regulations. Some zoning power is assigned to Indian band councils by s. 81 (g) of the *Indian Act*. No zoning by-law apparently existed in the *Peace Arch* case and the existence of s. 81 (g) played no part in the decision. The only federal "occupation of the field" would have been in the conditions in the surrender, which govern the Minister's power to manage the land by reason of s. 53 (1) of the *Indian Act*. But the court did not treat the situation as a "double aspect area".

A major issue in the case was whether surrendered and leased lands continued to be part of the reserve. The *Indian Act* from 1868 to 1951 specified that surrendered lands were not part of the reserve. The legislation used the term "Indian lands" to refer to both surrendered and unsurrendered lands. The new definition of reserves, enacted in 1951, did not mention surrendered lands and the new Act dropped the category of Indian lands.

The British Columbia Court of Appeal ruled that the surrendered and leased land was still within federal jurisdiction over "Lands reserved for the Indians." Provincial laws dealing with the use of land (such as the zoning and health laws) could not apply to it. This resolved the issue without the court ever stating whether the surrendered lands were still part of the Indian reserve for the purposes of the *Indian Act*.

The second modern case is the *Baert Construction* case.<sup>79</sup> In this case a Manitoba construction company built school buildings on an Indian reserve under contract with the federal government. The question arose whether provincial statutes relating to minimum wages, overtime and holidays applied to the non-Indian employees of the company. These employees did not work exclusively on Indian reserves and clearly would be governed by the provincial statutes both before and after the particular job. There were federal statutes governing conditions of employment in contracts with the federal government. The Manitoba Court of Appeal ruled that federal laws had not so occupied the field as to prevent the provincial laws from applying. While the judgment may be a roughly reasoned compromise, the provincial statutes were held to apply to the construction project.

<sup>74</sup> *R v Gullberg*, (1933) 3 W.W.R. 639.

<sup>75</sup> *Regina v Superior Concrete*, Vancouver County Court, May 16, 1966, Judge Swencisky, unreported.

<sup>76</sup> *R v GrosLouis*, (1944) 81 C.C.C. 167.

<sup>77</sup> *R v Williams*, (1944) 82 C.C.C. 166.

<sup>78</sup> (1970) 74 W.W.R. 380.

<sup>79</sup> *R v Baert Construction*, (1974) 19 C.C.C. (2d) 304.

In a recent case Federal Court Judge Bastin queried whether a commercial venture could be established on a reserve "exempt from the regulatory and taxing powers of the province."<sup>80</sup> The general shape of the answer is now apparent. Provincial legislation affecting the use of the land will not apply, following the decision in *Surrey v Peace Arch*. The *Peace Arch* decision is, in the end, not a remarkable holding. It is the logical corollary of an earlier Exchequer Court ruling which defined federal jurisdiction over reserves as comprehending "the control, direction and management" of those lands.<sup>81</sup> It simply applies to Indian reserves the 1899 ruling of the Judicial Committee of the Privy Council that provincial laws could not require, directly or indirectly, that national railways fence their rights of way:

... the Parliament of Canada has, in the opinion of their Lordships, exclusive right to prescribe regulations for the construction, repair, and alteration of the railway, and for its management, and to dictate the constitution and powers of the company ...<sup>82</sup>

The railway cases never decided that federal railways were enclaves totally beyond provincial jurisdiction. Railway property was subject to provincial property taxation.<sup>83</sup> The provinces could not require the railways to maintain drainage ditches on the rights of way, but if the drainage ditches became clogged and flooded adjoining land, provincial laws could hold the railway responsible for the damages.<sup>84</sup> Provincial worker's compensation legislation was held to apply to federal railways and interprovincial pipelines<sup>85</sup>, but provincial mechanic's lien laws were held not to apply.<sup>86</sup> The mechanic's lien legislation would allow a portion of the railway or pipeline to be seized and severed, frustrating the whole operation. Provincial law could not be given that power, but it could govern the civil responsibility of the railway company for injuries to its employees, at least in the absence of special federal legislation on the same subject.<sup>87</sup>

The general picture for on-reserve enterprises seems to have a number of similarities to the railway cases. Provincial laws cannot dictate the kind of enterprise, the particular facilities to be constructed or, in general, the use to be made of the land. Most provincial taxing laws will apply, so long as they do not interfere with the tax exemptions provided by the *Indian Act* or the property transactions occurring under its authority. The land cannot be taxed, but the non-Indian occupier of the land can be taxed personally. An Indian will not be taxed for property located on the reserve or on income earned on the reserve. The wording of the *Indian Act*

exemption would seem to bar a "personal" tax on an Indian, calculated on the value of reserve land occupied. Provincial sales taxes would apply to a non-Indian purchaser, but not to an Indian purchaser. No convincing rationale exists to bar provincial worker's compensation, labour relations and employment standards legislation from applying on a reserve. They all relate to the civil responsibility of employers and employees and not to the nature of the operation or the use of land. Construction and employment safety legislation would probably not apply to on-reserve enterprises, since they affect the physical plant. That seems a logical application of the *Peace Arch* ruling that provincial health laws, as they relate to the physical plant, do not apply to on-reserve enterprises. Provincial anti-pollution legislation would probably also not apply for much the same reason.<sup>88</sup>

The question of what legislation is in relation to persons and what legislation is in relation to land is not always a simple question. Is a hunting law a law in relation to persons or a law in relation to land? Is a business tax, based on square footage of office space, a tax in relation to land or is it a personal tax? The majority in the Nova Scotia appeal court recently ruled that hunting on a reserve is a use of land and exempt from provincial regulation for that reason.<sup>89</sup> A dissenting judgment argued that the law related to people, not land, citing decisions relating to off-reserve Indian hunting rights.<sup>90</sup> As noted earlier, the tax cases have defined the taxes on non-Indian occupiers of Indian reserve lands as taxes on the person, not taxes on the land, on the single basis that the land is not security for the payment of the tax. Cases not involving Indian reserves have defined business taxes, even when based on floor space, as personal taxes.<sup>91</sup>

<sup>80</sup> *The Pas Merchants v The Queen*, (1974) 50 D.L.R. (3d) 154.

<sup>81</sup> *The King v Lady McMaster*, (1926) Ex. C. R. 68 at p. 75, per Maclean, J..

<sup>82</sup> *C.P.R. v Notre Dame de Bonsecours*, (1899) A.C. 367 at 372; *Madden v Nelson and Fort Sheppard Railway Company*, (1899) A.C. 626.

<sup>83</sup> *C.P.R. v Notre Dame de Bonsecours*, *supra*.

<sup>84</sup> *C.P.R. v Notre Dame de Bonsecours*, *supra*.

<sup>85</sup> *Sincennes-McNaughton Lines v Bruneau*, (1924) S.C.R. 168; *W.C.B. v C.P.R.*, (1920) A.C. 184.

<sup>86</sup> *Campbell-Bennett v Comstock*, (1954) S.C.R. 207.

<sup>87</sup> The courts have permitted both the provinces and the federal government to legislate in relation to the civil responsibilities of federal entities. Two decisions upholding federal legislation are: *Curran v G.T.R.* (1898) 25 O.A.R. 407; *G.T.R. v A-G Canada*, (1907) A.C. 65.

<sup>88</sup> This assumes that the Vancouver County Court decision in *Regina v Superior Concrete*, *supra*, was incorrectly decided.

<sup>89</sup> *R v Isaac*, Nova Scotia Supreme Court Appeal Division, November 19, 1975, as yet unreported.

<sup>90</sup> In *Regina v White and Bob*, (1964) 52 W.W.R. (N.S.) 193, affirmed on appeal to the Supreme Court of Canada, 52 D.L.R. (2d) 481, Mr. Justice Davy of the British Columbia Court of Appeal ruled that the federal government had legislative jurisdiction over the off reserve hunting rights of Indians as part of their jurisdiction over "Indians".

<sup>91</sup> *Northern Saskatchewan Flying Training School v Buckland*, (1944) 1 D.L.R. 285 at 292.

# Band Local Government Powers

There is disagreement whether an Indian band council can (a) tax property, (b) zone, or (c) licence and regulate businesses which are located on surrendered lands. It seems clear that the provinces and their local governments cannot exercise such a power on surrendered lands (with the exception of "personal" taxation of non-Indians). The Governor in Council is not given such powers under s. 73 (1) of the *Indian Act*. Section 53 (1) gives the Minister or his appointee the right to "manage, sell, lease or otherwise dispose of surrendered lands" in accordance with the *Indian Act* and the terms of the surrender. This appears to be a proprietary power of management, not a legislative power. In other words, while provisions may be inserted in a lease regulating the activity that may occur on the leased land, the Minister does not have the additional power to affect the use of the leased land by the equivalent of zoning, taxing or regulatory by-laws.

The only remaining authority which may have the power to enact zoning, taxing and regulatory by-laws for surrendered lands is the band council. The possibility of band council power raises two questions: 1. are unsold surrendered lands part of the reserve, and 2. does a band council have jurisdiction over non-Indians on the reserve?

## 1. ARE UNSOLD SURRENDERED LANDS PART OF THE RESERVE?

The *Indian Act* does not appear consistent in its terminology making a simple textual answer to this question very difficult. The *Indian Act* defines both "reserve" and "surrendered lands":

"reserve" means a tract of land, the legal title to which is vested in Her Majesty, that has been set apart by Her Majesty for the use and benefit of a band.

"surrendered lands" means a reserve or part of a reserve or any interest therein, the legal title to which remains vested in Her Majesty, that has been released or surrendered by the band for whose use and benefit it was set apart.

Section 36 provides for "special reserves":

Where lands have been set apart for the use and benefit of a band and legal title thereto is not vested in Her Majesty, this Act applies as though the lands were a reserve within the meaning of this Act.

The essential character of a "reserve" is, then, that the land "has been set apart for the use and benefit of a band . . ." The *Indian Act* does not state how land is "set aside". In the absence of a statutory definition, presumably any setting aside, any provision of a special legal regime, would be sufficient. That requirement is met by unsold surrendered lands. The second requirement is that it have been set aside for the "use and benefit" of a band. If both use *and* benefit are necessary then leased surrendered lands would not conform to the definition, since the use of the land is no longer in the band. The trial judge in *Surrey v Peace Arch* ruled that leased surrendered lands were not reserve lands because the band did not have both use and benefit.<sup>92</sup> The judgment on appeal in the same case did not comment on this particu-

lar question. If both use *and* benefit are necessary, the term "benefit" is redundant. All use is a benefit, though not all benefits involve use. In such a situation, the courts could interpret "use and benefit" disjunctively rather than conjunctively. As in certain other situations, "and" would, in effect, be read by the courts as "or". This point has not been settled by any judicial ruling.

Mr. Justice Maclean of the British Columbia Court of Appeal in *Surrey v Peace Arch* commented on "surrenders":

In my view the "surrender" under the *Indian Act* is not a surrender as a conveyancer would understand it. The Indians are in effect forbidden from leasing or conveying the lands within an Indian reserve, and this function must be performed by an official of the Government if it is to be performed at all: See sec. 58 (3) of the *Indian Act*. This is obviously for the protection of the Indians. Further, it is to be noted that the surrender is in favour of Her Majesty "in trust". This obviously means in trust for the Indians. The title which Her Majesty gets under this arrangement is an empty one.<sup>93</sup>

Mr. Justice Maclean quoted from Mr. Justice Rand's Judgment in the Supreme Court of Canada decision in the *St. Ann's Island Shooting Club* case:

I find myself unable to agree that there was a total and definitive surrender. What was intended was a surrender sufficient to enable a valid letting to be made to the trustees' for such term and on such conditions' as the Superintendent General might approve. It was at most a surrender to permit such leasing to them as might be made and continued, even though subject to the approval of the Superintendent General, by those having authority to do so. It was not a final and irrevocable commitment of the land to leasing for the benefit of the Indians, and much less to a leasing in perpetuity, or in the judgment of the Superintendent General, to the Club. To the Council, the Superintendent General stood for the government of which he was a representative. Upon the expiration of the holding by the Club (the lessee), the reversion of the original privileges of the Indians fell into possession.<sup>94</sup>

In these two statements the judges are impressed by the basic similarity of leased surrendered lands and any other kind of lease situation. What is distinctive about the situation is the lease, not the surrender. While this encouraged Mr. Justice Maclean in ruling that leased surrendered lands were still "Lands reserved for the Indians" within section 91 (24) of the British North America Act, 1867, it does not seem helpful, in the end, in determining whether the land falls within the statutory category of "reserve" found in the *Indian Act*.

<sup>92</sup> British Columbia Supreme Court, September 11, 1968, Mr. Justice Kirke Smith.

<sup>93</sup> (1970) 74 W.W.R. 380.

<sup>94</sup> (1950) S.C.R. 211 at 219.

There are sections in the *Indian Act* which seem to suggest that unsold surrendered lands fall within the term Indian reserve. Section 18 provides that the Governor in Council may determine whether a particular use of reserve lands is for the use and benefit of the band, subject to any treaty or surrender. Sections 29 and 35 deal with the seizure and expropriation of reserve lands. Was it intended that they would not apply to surrendered lands? Earlier it was suggested that a seizure or expropriation of surrendered land could frustrate powers of the Minister under sections 53 and 54 of the *Indian Act*. The Department of National Revenue, in Interpretation Bulletin IT-62, August 18, 1972, treats the words "on reserve" in section 87 (b) as including surrendered lands (in spite of the fact that the previous sub-section refers to "reserve or surrendered lands"). National Revenue, in effect, rejected a narrow technical interpretation in favour of one they felt accorded more with the purposes of the exemption.

There are more numerous sections which refer to both reserve and surrendered lands. Either the wording is redundant or it suggests that the two categories are separate and discreet: s. 2 (2) "Band"; s. 4 (2) (b); s. 57 (a); s. 59 (a); s. 64 (b) and (i); s. 87 (a) and sections 21 and 55 read together. In 1974, in the *Indian Oil and Gas Act*<sup>95</sup>, Parliament reverted to the pre-1951 *Indian Act* term "Indian lands" again to mean both reserve and surrendered lands. The *Canada Land Surveys Act*<sup>96</sup> also uses both terms.

A judicial ruling that surrendered lands are not part of the reserve would create a jurisdictional vacuum and would detract from the ability of Indians to manage their own assets. Both of these policy factors could prompt a court to favour an interpretation of the *Indian Act* which included surrendered lands within the category of reserve lands.

The Department of Indian Affairs has taken the position that surrendered lands are not part of reserve lands. It follows from this that they take the position that band councils do not have the power to (a) tax property, (b) zone, or (c) licence and regulate businesses which are located on surrendered lands. No position has been taken on the parallel jurisdictional question concerning lands subject to a permit or a locatee lease.

## 2. DOES A BAND COUNCIL HAVE JURISDICTION OVER NON-INDIANS ON THE RESERVE?

The general powers of Indian band councils are set out in sections 81 and 83 of the *Indian Act*. Only two powers under section 81 are clearly limited to Indians: (h) and (i). Two powers would clearly apply to non-Indians; (n) and (p). The remaining powers in the section have no express or implied limitation to Indians, band members or to unsold surrendered lands.

Section 83 (1) (a) (i) dealing with property taxation is limited to the "interests in land in the reserve of persons lawfully in possession thereof . . ." Section 20 reads:

(1) No Indian is lawfully in possession of land in a reserve unless, with the approval of the Minister, possession of the land has been allotted to him by the council of the band.

(2) The Minister may issue to an Indian who is lawfully in possession of land in a reserve a certificate, to be called a Certificate of Possession, as evidence of his right to possession of the land described therein.

The Act clearly draws a distinction between an Indian *in possession* of land on a reserve and an Indian *lawfully in possession* of land on a reserve. At first blush, it would seem clear that section 83 (1) (a) (i), by using the words "lawfully in possession", is talking about the taxation of band members whose land holdings have been authorized in accordance with s. 20 of the *Indian Act*.

The sections of the *Indian Act* which refer to "lawful possession" of land in a reserve use three different terms to refer to the possessor: "Indian", "individual" and "person". Does the *Indian Act* draw a distinction between "persons lawfully in possession" and "Indians lawfully in possession"? Such a distinction would not be wholly novel for in the pre-1951 *Indian Act* the terms "Indian" and "person" were mutually exclusive.

"Person" is used in the context of lawful possession in section 20 (3) of the Act.<sup>97</sup>

"Indian" is used in the context of lawful possession in the following sections: s. 18 (2); s. 20 (1) and (2); s. 22; s. 24; s. 25 (1) and (2); s. 35 (4); s. 42 (2); s. 84 and s. 111 (2).

"Individual" is used in the context of lawful possession in section 58, where it appears to be used in contrast to band rights in reserve land. Section 58 (4) refers to "individual Indians in lawful possession . . ." Section 50 (4) refers to "purchaser".

The implication of the wording of the *Indian Act* appears to be that, with the apparent exception of section 20 (3), "person" is used to indicate Indians and non-Indians. For example, section 94 refers to "person" while section 95 refers to "Indian". It is suggested that the better interpretation is that "persons" in lawful possession is a larger category than "Indians" in lawful possession. If this is correct a band council acting under section 83 (1) (a) (i) could tax Indians and non-Indians on the reserve.

It will be clear from this discussion that these particular questions cannot be answered with any finality on the basis of the existing legislation and the lack of judicial analysis. Perhaps partly for this reason, bands have not generally attempted to use the powers available under section 83. While some bands have been designated as having reached an advanced stage of development (the prerequisite for exercising section 83 powers) only two or three bands in Canada having a taxing by-law in force under section 83. A few bands have service or utility levies, most often as terms in cottage leases.

<sup>95</sup> S.C. 1974-75, Ch. 15.

<sup>96</sup> R.S.C. 1970, Ch. L-5, sections 30 and 32 (2).

<sup>97</sup> "Person" is used in sections 49, 50 (1) and (2). This usage is understandable in the context of these sections which deal with the inheritance of reserve lands. The heir, as acknowledged in section 50, may not be an Indian.

# Specific Questions

Indians and non-Indians operating businesses on reserves need the answers to specific questions. Is an Indian employee liable for income tax? Are on-reserve employees covered by worker's compensation? Does provincial construction safety legislation apply on leased land?

This section will attempt to respond to a number of these specific and practical questions, largely drawing on material already discussed.

## 1. FORMS OF BUSINESS ORGANIZATION

A business on a reserve, like any other business, may take the legal form of a single proprietorship, a partnership, a co-operative or a company. The form of business organization affects a number of matters which are important to the life of the business.

### (a) RESERVE LANDS USE

Band members can obtain legal rights to use particular sections of reserves and can use them for business purposes. If a single proprietor is a band member or if all the members of a partnership are band members, then the business can be located on allotted reserve land without the need for a surrender, a permit or a locatee lease. If a single proprietor is not a band member, if a partnership contains one or more partners who are not band members, or if a business is incorporated, then the business cannot be located on the reserve unless the procedures are followed which allow non-Indians to occupy reserve lands.

### (b) TAX EXEMPTIONS

The taxation exemptions in the *Indian Act* apply only to Indians (s. 87). If the business is incorporated it is not an Indian within the meaning of the *Indian Act*. The business itself will have no tax exemption, though any shareholders and employees who are Indians may have a tax exemption on dividends and salaries. The business itself will only be tax exempt if it is a single proprietorship run by an Indian or a partnership, all the members of which are Indian. In a "mixed" partnership the Indian partners will be exempt from income tax, but not the non-Indian partners.

### (c) PROVINCIAL LAWS DEALING WITH ECONOMIC ORGANIZATION

Most of the laws dealing with the form of economic organization are provincial. The laws which govern single proprietorships are the regular laws of property and contract, which are primarily within provincial jurisdiction. Most provinces have statutes dealing with partnerships. Both the federal and provincial governments have laws providing for the incorporation of co-operatives and companies. Although the question has not been discussed by the courts, it is generally assumed that provincial laws relating to the form of economic organization and regular commercial transactions apply on reserves subject to the *Indian Act*.<sup>98</sup>

## 2. TAXATION

The only sections in the *Indian Act* providing for any exemption from taxation are sections 87 and 90:

87. Notwithstanding any other Act of the Parliament of Canada or any Act of the legislature of a province, but subject to subsection (2) and to section 83, the following property is exempt from taxation, namely:

(a) the interest of an Indian or a band in reserve or surrendered lands; and

(b) the personal property of an Indian or band situated on a reserve;

and no Indian or band is subject to taxation in respect of the ownership, occupation, possession or use of any property mentioned in paragraph (a) or (b) or is otherwise subject to taxation in respect of any such property . . .

90 (1) for the purposes of sections 87 and 89, personal property that was

(a) purchased by Her Majesty with Indian moneys or moneys appropriated by Parliament for the use and benefit of Indians or bands, or

(b) given to Indians or to a band under a treaty or agreement between a band and Her Majesty shall be deemed always to be situated on a reserve.

The Indian tax exemption found in s. 87 of the *Indian Act* has been held not to exempt Indians from a motor vehicle registration fee,<sup>99</sup> a driver's licence fee,<sup>100</sup> a tax, based on sales or consumption, imposed on a producer or supplier selling to Indians on a reserve and passed on in the selling price,<sup>101</sup> a licence under provincial sales tax legislation,<sup>102</sup> a business licence,<sup>103</sup> and customs duties imposed upon the importation of foods into Canada.<sup>104</sup>

### (a) INCOME TAXATION

Income tax is assessed in Canada by the federal and provincial governments. With the exception of Quebec, it is collected exclusively by the federal government. The present practice of the Department of National Revenue is to recognize an exemption from income tax for the income of an Indian earned on a reserve. The domicile of the Indian is treated as irrelevant. The place of payment of the income is treated as irrelevant. The exemption exists on "surrendered lands". The Department of National Revenue Interpretation Bulletin No. IT-62, August 18, 1972, states in part:

Where the surrender is conditional and the band retains reversionary rights to the land in question, those lands will normally be considered by the Department (of National Revenue) to remain as "reserve" lands, particularly if the use to which they are put is determined by the Governor in Council to be "for the use and benefit of the band" pursuant to subsection 18 (1) of the *Indian Act*. This could apply when the lands are leased to an outsider for a specified term but would not, of course, apply if the lands were sold since legal title would no longer vest in Her Majesty.

<sup>98</sup> The only judicial comment on this point is the reference by Mr. Justice Laskin, as he then was, to that as a question which did not have to be decided in his dissenting judgment in *Cardinal v Attorney General of Alberta*, (1974) S.C.R. 695.

<sup>99</sup> *Feldman v Jocks*, 74 Que. S.C. 56.

<sup>100</sup> *Feldman v Jocks*, supra.

<sup>101</sup> *Delisle v Shawinigan Water and Power*, (1941) 4 D.L.R. 556, 79 Que. S.C. 353.

<sup>102</sup> *R v Williams*, (1944) 82 C.C.C. 166.

<sup>103</sup> *Montreal v Bluefeather*, 39 R.J. 100.

<sup>104</sup> *R v Francis*, (1956) S.C.R. 618.

Companies cannot be classified as "Indians" even if all the shareholders are Indians. Companies have no income tax exemption simply because they are located on Indian reserve land. Indian shareholders will be exempt from income tax on dividends received from a company located on a reserve.

There has been confusion for a number of years about the tax status of band councils. Interpretation Bulletin IT-62 states:

The powers exercised by band councils that have reached the advanced stage of development required by Section 83 of the Indian Act and the powers exercised by other Canadian municipalities are so similar that such band councils will be regarded as Canadian municipalities for purposes of paragraph 149 (1) (c) of the Income Tax Act.

...

Paragraph 149 (1) (c) of the Income Tax Act provides that a municipality in Canada, or a municipal or public body performing a function of government in Canada is exempt from taxation under Part I of the Act and this will also apply to those band councils that exercise the powers authorized under Sections 81 and 83 of the Indian Act.

While this appears to be straightforward and logical, there have been recent suggestions that band councils will not be equated with municipalities for tax purposes because they are not incorporated. Since the Department of Indian Affairs has always described band councils as equivalent to rural municipalities, it would seem clearly unfair to deny them "municipal" status for tax purposes, when, as the Interpretation Bulletin notes, there is no statutory definition of the term in the Income Tax Act.

#### (b) PROVINCIAL SALES TAXES

There is no uniform pattern in regard to the application of provincial sales taxes to Indians. Saskatchewan and Nova Scotia exempt all Indian purchases from the provincial sales tax. Ontario and Quebec exempt Indian purchases when the goods are to be delivered on the reserve.

As mentioned earlier, there are two lower court judgments in Quebec which apply provincial sales tax legislation to Indians when selling goods to non-Indians on reserves. The second of the two cases suggests that provincial sales taxes would probably not apply to an Indian purchaser on the reserve.<sup>105</sup>

In January, 1975, the Ministry of Revenue of the Province of Ontario informed Indian band councils that Indians residing on reserves would be allowed to buy gasoline on reserves without paying the provincial sales tax of 19¢ a gallon. Indians resident on reserves have been able to obtain identification cards to use when buying gasoline on reserves.

#### (c) PROVINCIAL PROPERTY TAXATION

While provincial law cannot impose a tax on property on a reserve, there are court decisions which rule that a province can tax the non-Indian occupier of reserve land and can base the amount of the tax on the value of the property occupied. The tax is classified as a tax on the person of the occupier, not on the property, because in default of payment the province cannot sell the land to recover unpaid taxes.<sup>106</sup>

#### (d) BAND TAXATION

The question of the power of band councils to impose a property tax on non-Indian use of reserve lands (whether surrendered or not) is dealt with in part four. The Department of Indian Affairs is of the view that bands do not have that power on surrendered lands and are uncertain of the power on unsundered lands. Yet at least one band has a taxing by-law which applies to both surrendered and unsundered lands and to Indians and non-Indians.

### 3. WORKER'S COMPENSATION

There are no judicial decisions on the application of provincial worker's compensation laws to businesses located on Indian reserves. There are court cases which apply provincial worker's compensation legislation to national railways and other forms of transportation within federal legislative jurisdiction.<sup>107</sup> It seems reasonable, on the basis of those decisions and on the analogous ruling in the *Baert Construction* case<sup>108</sup>, to suggest that provincial worker's compensation legislation would apply to a business located on an Indian reserve.

### 4. ZONING

The specific ruling in the *Peace Arch* case<sup>109</sup> held that provincial zoning laws cannot apply to a business on surrendered reserve land.

### 5. HEALTH AND SAFETY LEGISLATION

Health and safety legislation which requires certain physical characteristics to buildings or working premises (whether number of toilets or railings on stairs) would not apply to a business on an Indian reserve. This assumes that the early case of *Carter v Nichol* is wrongly decided<sup>110</sup> as inconsistent with the *Peace Arch* case and parallel rulings in relation to national railways.<sup>111</sup>

### 6. PROVINCIAL ENVIRONMENTAL LEGISLATION

To the extent that provincial environmental legislation affects the use of land or the nature of the operation which can be carried on, such legislation cannot apply to enterprises located on Indian reserve land. This kind of legislation can be grouped with the health and safety legislation discussed immediately above. This assumed that the British Columbia County Court decision in relation to an anti-noise by-law was wrongly decided.<sup>112</sup>

<sup>105</sup> *R v Grosfous*, (1944) 81 C.C.C. 167; *R v Williams*, (1944) 82 C.C.C. 166.

<sup>106</sup> See footnote 12.

<sup>107</sup> See footnote 86.

<sup>108</sup> (1974) 19 C.C.C. (2d) 304.

<sup>109</sup> (1970) 74 W.W.R. 380.

<sup>110</sup> (1911) 1 W.W.R. 392.

<sup>111</sup> (1970) 74 W.W.R. 380, and see, for example, *Washington v G.T.R.*, (1897) 24 O.A.R. 183, reversed on other grounds, 28 S.C.R. 184, which was affirmed (1899) A.C. 275; *Monkhouse v G.T.R.* (1883) 8 O.A.R. 637.

<sup>112</sup> *Regina v Superior Concrete*, Vancouver County Court, May 16, 1966, Judge Swencisky, unreported.

## 7. MECHANIC'S LIENS

A provincial mechanic's lien law could not attach obligations to the land or to buildings on reserve or surrendered lands. There seems no reason why it could not apply to personal property owned by non-Indians on a reserve.

## 8. LABOUR LEGISLATION

Provincial labour relations legislation can apply to federally incorporated companies but not to national railways or inter-provincial pipelines.<sup>113</sup> There seems no reason why provincial labour relations law would not apply to businesses on Indian reserves unless the nature of the business, on its own, meant that federal labour relations legislation would apply.

## 9. EMPLOYMENT STANDARDS LEGISLATION

Provincial laws relating to hours of work, vacations, child labour, minimum wages, overtime or dismissal would apply to enterprises on reserves or surrendered lands, subject to federal legislation. As shown in the *Baert Construction* case there are federal employment standards laws applying to contracts with the federal government. Provincial employment standards laws have been held not to apply to employees of the federal government.<sup>114</sup>

## 10. BUSINESS LICENCING

Business licence fees, in another context, have been classified as a "personal" tax and therefore could apply to non-Indians operating a business on Indian reserve land. To the extent that a business licensing system went beyond revenue purposes and sought to control the nature or location of businesses, it could not apply on reserve lands.

## 11. CHATTEL MORTGAGES AND CONDITIONAL SALES

The *Indian Act* draws a distinction between these two methods of financing the purchase of personal property. Section 89 (2) provides that where a "right of property or right of possession" remains wholly or in part in the vendor, the vendor may exercise his or her rights under the agreement, notwithstanding that the piece of personal property is located on a reserve. An item sold on a conditional sales contract can be recovered in compliance with the terms of the agreement (which would, in at least some situations, prevent the application of certain provincial laws). An item sold with a chattel mortgage taken as part of the purchase arrangement, would be protected from seizure under 89 (1). These provisions, of course, only apply to the property of an Indian, and would have no effect on the personal property of a company operating a business on reserve land. Although there are no judicial decisions to this effect, it is generally accepted that regular provincial laws would apply to the non-Indians in relation to chattel mortgages and conditional sales.

## 12. BAND-CONTROLLED ENTERPRISES

There are alternative ways of establishing enterprises on reserve lands which would be under the ownership and control of the band:

1. For a small scale industry, like a band farm or an on-reserve sawmill, the enterprise could simply be located on band land (unallotted reserve land) and run by the band. Strictly, no legal entity would be involved since bands are generally not considered legal entities. No limited liability would be involved and the tax status of the band would be uncertain.
2. For any enterprise where limited liability was desired, there would have to be the incorporation of a company or a co-operative. The shares of a company can be held in trust for the band. A lease, either a locatee lease or a lease after surrender, would be necessary. Reserve land could be allotted to a locatee to be held in trust for the band, creating much the same land rental situation as with a lease after surrender. Limited liability would be achieved. The company would have no special tax status.
3. For a subdivision development, band control can be achieved by the appointment of band representatives as agents of the Crown to lease surrendered reserve lands under section 53 (1). No tax liability is created for the agents and no new legal entity is created by this arrangement.
4. If the taxation questions are resolved favourably to Indian band councils, it may be possible to use band "municipal" corporations as a vehicle for certain kinds of activity.

## 13. AMENDMENT TO THE INDIAN ACT

The federal government has stated, on a number of occasions, that they would not amend the present *Indian Act* without prior consultation with the Indian people. There is widespread agreement that the Act should be amended to clearly establish the band councils as legal entities. This would facilitate band-controlled enterprises and could be expected to settle the dispute whether bands are municipalities for tax purposes. Now that the jurisdictional question about surrendered lands is more widely appreciated, it would be likely that the Act would be amended to confirm band jurisdiction over both surrendered and unsurrendered lands.

A process involving the federal government and the National Indian Brotherhood (and its member provincial organizations) has begun. The process involves a few Indian-government task forces, examining the *Indian Act*, socio-economic development and land claims. The task force reports will go to both the federal government and the Indian organizations and any recommendations will, at the end of the process, be considered in discussions between the National Indian Brotherhood and the federal cabinet. This is a slow and careful process and it is impossible to predict the length of time that will be involved or the eventual outcome. Any changes can be expected to facilitate economic development on reserves, both by Indians and non-Indians.

<sup>113</sup> The rationale is the same as in *Campbell-Bennett v Comstock*, (1954) S.C.R. 207.

<sup>114</sup> *Re Treaty of Versailles, Re Hours of Labour*, (1925) 3 D.L.R. 1114 (S.C.C.); *Reference Re Minimum Wage Act of Saskatchewan*, (1948) S.C.R. 248.

# Appendix A

Documents, statutes and agreements relating to the ownership and status of Indian reserves.

## 1. ONTARIO

(a) An Act for the settlement of certain questions between the Governments of Canada and Ontario respecting Indian Lands, (1891) 54-55 Vict. Ch. 5 (Canada), (1891) 54 Vict. Ch. 3 (Ontario).

(b) Agreement of 1894 re Treaty 3 Reserves, Document No. 353, Indian Treaties and Surrenders, Ottawa, King's Printer, 1912, Vol. III, p. 132 (reprinted in the Coles Canadiana Collection).

(c) Agreement of 1902 re Ontario Mining v Seybold, Document No. 459, Indian Treaties and Surrenders, Ottawa, King's Printer, 1912, Vol. III, p. 356 (reprinted in the Coles Canadiana Collection).

(d) Agreement of 1905 re Treaty 9, reprinted in The James Bay Treaty, Treaty No. 9, Ottawa, Queen's Printer, 1964, p. 25. This pamphlet is available from the Department of Indian Affairs.

(e) The Ontario Boundaries Extension Act, Statutes of Canada, 1912, Ch. 40.

(f) An Act to confirm the title of the Government of Canada to certain lands and Indian Lands, (1915) 5 Geo. V, Ch. 12 (Ontario). This statute deals with reserves in the Treaty 3 area.

(g) An Act for the settlement of certain questions between the Governments of Canada and Ontario respecting Indian Reserve Lands, (1924) 14 Geo. V, Ch. 15 (Ontario), (1924) 14-15 Geo. V, Ch. 48 (Canada).

## 2. QUEBEC

(a) The Quebec Boundaries Extension Act, Statutes of Canada, 1912, Ch. 45.

(b) Report on the Territories occupied by the Indians in the Province of Quebec, Report by Paul-Emile Marquis, Legal Adviser, Department of Family and Social Welfare, Province of Quebec, October, 1965, unpublished, available from the Department of Indian Affairs, Ottawa.

## 3. ALBERTA, SASKATCHEWAN AND MANITOBA

(a) The Natural Resources Transfer Agreements, enacted as the British North America Act, 1930, R.S.C. 1970, Appendices, No. 25.

## 4. NEW BRUNSWICK AND NOVA SCOTIA

(a) An Act to confirm an Agreement between the Government of Canada and the Government of the Province of New Brunswick respecting Indian Reserves, 1959 Statutes of Canada, Ch. 47.

(b) An Act to confirm an Agreement between the Government of Canada and the Government of the Province of Nova Scotia respecting Indian Reserves, 1959 Statutes of Canada, Ch. 50.

## 5. BRITISH COLUMBIA

(a) The Terms of Union, Article 13, R.S.C. 1970, Appendices, No. 10.

(b) An Act to provide for the Settlement of Differences between the Governments of the Dominion and the Province respecting Indian Lands and Indian Affairs in the Province of British Columbia, (1919) 9 Geo. V, Ch. 32 (British Columbia).

(c) An Act to provide for the Settlement of Differences between the Governments of the Dominion of Canada and the Province of British Columbia respecting Indian Lands and certain other Indian Affairs in the said Province, (1920) 10-11 Geo. V, Ch. 51 (Canada).

(d) The British North America Act, 1930, R.S.C. 1970, Appendices, No. 25. This statute gave force to a federal-provincial agreement reconveying the Railway Belt and the Peace River Block to the province.

(e) British Columbia Order in Council 1036, July 29, 1938. This document deals with reserves outside the Railway Belt and the Peace River Block. Order in Council 1036 has been modified by two subsequent provincial orders in council: November 28, 1961 and May 13, 1969.

(f) The British Columbia Indian Reserves Mineral Resources Act, 1943, Statutes of British Columbia, Ch. 40; 1943-44, Statutes of Canada, Ch. 19

## 6. PRINCE EDWARD ISLAND

There are no statutes or agreements dealing with property rights in Indian reserves in Prince Edward Island.

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